

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LARRY J DUANE SPENCER,

ORDER

Plaintiff,

10-cv-288-bbc

v.

JOSEPH L. SOMMERS, ANN SAYLES,
STUART A. SCHWARTZ, DAVID KNOLL,
CHRISTOPHER DUREN, PAUL NESSON JR,
TIMOTHY DAVID EDWARDS, JENNIFER HARPER,
GREGORY DUTCH, STAN KAUFMAN,
JAY LAUFENBERG, MARY JONES,
FRANK EARL RADCLIFF, ROY U. SCHENK,
CINDY S. GEOFFREY, MELISSA HARNESS,
JOHN RADOVAN, ROSA I AGUILU,
BRIAN BLANCHARD, GARY H. HAMBLIN,
JOHN PIER ROEMER, KAREN KRUGGER,
MARIANNE SIMPSON, ANA M. BOATWRIGHT,
TAMMY J. SIME, MS BURNS, MS RICHARDSON,
RANDALL HEPP, NANCY GANTHER,
CAPT. KANNANBERG, CAPT GUARCEAU,
MR JAEGER, MS TEGELS, C.O. KRATKY,
SANDY K. MAGUIR-PETKE, C.O. RYBUCK, MS RICK,
TERRY L. SHUK, C.O. CORBIN, DAWON JONES,
JAMES ISAACSON, ROY LA BARTON GAY,
D.O. WATSON, TODD E. MEURER,
PEGGY L. NICHOLAS, STACEY A. BIRCH,
BRENDA L. PETERSON, SHEILA D. PATTEN,
DOCTOR HANNULA, MR SWEENEY
and DEPARTMENT OF CORRECTIONS

Defendants.

In an order dated July 6, 2010, I denied plaintiff Larry Spencer's motion to waive the initial partial payment in this case and granted him an extension of time until July 23, 2010, in which to pay the \$1.65 initial partial payment of the fee for filing this action. The court has not received plaintiff's payment. Instead, plaintiff has filed a response to the order in which he asks the court to take his complaint and subsequent motions under advisement for screening. Plaintiff's request will be denied and the case will be closed without prejudice.

As plaintiff was told in the July 6 order, the court cannot find that he lacks the means to pay an initial partial payment of the \$350 fee for filing this case. In fact, the Court of Appeals for the Seventh Circuit ruled in Newlin v. Helman, 123 F.3d 429, 435 (7th Cir. 1997), rev'd on other grounds by Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000), and Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000), that a prisoner has "means" any time his trust fund account statement reveals periodic income. Although plaintiff believes that he will not be able to make an initial partial payment in this case, his trust fund account statement shows that he has means to do so because he had regular deposits into his account in the six-month period immediately preceding the filing of his complaint. Therefore, I will deny his motion to waive the initial partial payment and close the case without prejudice.

Under the holding of Newlin, plaintiff will not be eligible for waiver of the initial partial payment under § 1915(b)(4) unless he submits a six-month trust fund account statement revealing an absence of periodic income for the full six-month period. If plaintiff

is able to make an initial partial payment in the future or enough time elapses that a six month trust fund account statement would show that he has no means to make an initial partial payment, he may move to reopen this case. Pursuant to plaintiff's request, I am returning the attachments he sent with his response to the July 6 order.

ORDER

IT IS ORDERED that plaintiff Larry Spencer's request to waive the initial partial payment is DENIED and this case is DISMISSED WITHOUT PREJUDICE.

Entered this 28th day of July, 2010.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge